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August 12, 2002

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20554

REDACTED -
For Public Inspection

Re: Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware, WC Docket 02-157

Dear Ms. Dortch:

This is the cover letter for the Reply Comments for the Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware ("Reply Comments").

These Reply Comments contain confidential information. We are filing confidential and redacted versions of the Reply Comments.

1. The Reply Comments consist of (a) a stand-alone document entitled "Reply Comments by Verizon New England and Verizon Delaware," and (b) two Reply Appendices containing supporting material.

2. Specifically, we are herewith submitting for filing:

a. One original of only the portions of the Reply Comments that contain confidential information (including selected portions on CD-ROM);

b. One original of the redacted Reply Comments;

c. Four copies of the redacted Reply Comments; and

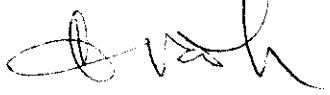
d. Four copies the redacted Reply Comments on CD-ROM.

3. We are also tendering to you certain copies of this letter and of portions of the Reply Comments for date-stamping purposes. Please date-stamp and return these materials.

4. Under separate cover, we are submitting copies (redacted as appropriate) of the Reply Comments to Ms. Janice Myles, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C-327, 455 12th Street, S.W., Washington, D.C. 20544. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the New Hampshire Public Utilities Commission, to the Delaware Public Service Commission, and to Qualex (the Commission's copy contractor).

Thank you for your assistance in this matter. If you have any questions, please call me at 202-326-7930 or Steven McPherson at 703-351-3083.

Very truly yours,



Evan T. Leo

Encs.

REDACTED — For Public Inspection

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New England	)	
Inc., Verizon Delaware Inc., Bell	)	
Atlantic Communications, Inc. (d/b/a	)	WC Docket No. 02-157
Verizon Long Distance), NYNEX Long	)	
Distance Company (d/b/a Verizon	)	
Enterprise Solutions), Verizon Global	)	
Networks Inc., and Verizon Select	)	
Services Inc., for Authorization To	)	
Provide In-Region, InterLATA Services	)	
in New Hampshire and Delaware	)	

REPLY COMMENTS OF VERIZON NEW ENGLAND AND VERIZON DELAWARE

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August 12, 2002

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INTRODUCTION AND SUMMARY

Based on comprehensive investigations, the New Hampshire Public Utilities Commission ("PUC") and the Delaware Public Service Commission ("PSC") have both found that Verizon satisfies all the requirements of the 1996 Act and that its Application to provide long distance service in those states should be granted. These conclusions are obviously correct because Verizon has taken the same extensive steps to open its local markets in New Hampshire and Delaware as it has taken in other Verizon states where the Commission has found that Verizon satisfies all the requirements of the 1996 Act.

The comments in this proceeding do not seriously dispute any aspect of this showing. Indeed, there are virtually no complaints about Verizon's actual performance in providing access to the various checklist items and none whatsoever about Verizon's Operations Support Systems ("OSS"), which are the same as those the Commission has found checklist-compliant in granting Verizon's previous applications. The Department of Justice ("DOJ"), having reviewed the current record demonstrating Verizon's checklist compliance, likewise recommends that Verizon's Application should be approved. See DOJ Eval. at 11. And the few comments from other parties focus predominantly on one issue — the wholesale rates adopted by the New Hampshire and Delaware commissions. But they do not come close to making the case for overruling the carefully reached determinations of these commissions.

As Verizon demonstrated in its Application, both the New Hampshire PUC and the Delaware PSC conducted exhaustive pricing proceedings in which they found that Verizon's rates comply fully with this Commission's TELRIC methodology. Moreover, the loop and non-loop rates set by the New Hampshire PUC — and the loop rates set by the Delaware PSC — also satisfy the Commission's well-settled benchmark standard

compared to the newly established TELRIC rates in New York, which AT&T and other CLECs have championed in the past.

In the case of New Hampshire, only AT&T challenges the switching rates approved by the New Hampshire PUC, but even it concedes that these rates pass the benchmark test that this Commission has consistently applied in previous applications. And AT&T itself argued before the New Hampshire PUC that the recently established New York rates are the correct rates to use in any benchmark analysis in New Hampshire — the opposite of what it argues here. Despite all this, AT&T nonetheless claims that the Commission should not apply its settled benchmark methodology here, but there is no justification for abandoning that well-established standard in this case. And while BayRing quibbles with some of the inputs adopted by the PUC in setting loop rates, it too does not dispute that the rates produced by those inputs satisfy this Commission's established benchmark standard when compared to the recently adopted New York rates. Thus, even assuming BayRing's claims were factually correct — which they are not — they are irrelevant.

In the case of Delaware, AT&T, together with WorldCom, are the only parties to challenge the Delaware switching rates. Their principal claim is that the switching rates — which AT&T previously *defended* as TELRIC-compliant in federal district court — are somehow too high and should be re-examined. Yet they have failed to respond to the Delaware PSC's express invitation to petition to reopen those rates. Under parallel circumstances in Vermont — where AT&T and WorldCom *still* have not asked the state commission to re-examine its rates after opportunistically complaining about them in the 271 context — this Commission rejected precisely the same claim. And to the extent

AT&T also quarrels with specific aspects of the switching rates that it previously defended, those claims have not been presented to the Delaware PSC, and merely rehash arguments that this Commission has rejected in prior section 271 proceedings.

With respect to non-recurring charges in Delaware, AT&T — again the sole commenter — also fails to demonstrate that the Delaware PSC committed a "clear error" with respect to the rates that it adopted. On the contrary, the PSC established those rates in essentially the same way as the non-recurring rates set by the New York PSC — which AT&T itself has repeatedly held up as the gold standard when it comes to setting UNE rates. In fact, the Delaware PSC went one better than New York, and required a number of modifications that caused the non-recurring rates to be reduced even further. AT&T is equally off base with respect to the few specific non-recurring rates it challenges, including the $35 hot-cut rate that is in place in both New York and New Jersey, and that was approved by this Commission. And while AT&T rehashes its previous arguments with respect to the feature change service order charge — which obviously applies to only a small fraction of all orders — the Commission already held that those claims must be presented to and resolved by the state commission in the first instance, which AT&T has failed to do.

The commenters also fail to establish the existence of a price squeeze in either New Hampshire or Delaware. Indeed, there is extensive competition in both states — including for residential customers — using all three modes of entry under the Act. That, in itself, proves that a price squeeze does not exist. Moreover, the Act itself precludes the possibility of a so-called "price squeeze" by allowing CLECs to resell services at an avoided-cost discount, ensuring that CLECs have an opportunity to compete even where

retail rates are near or below cost. In any event, the commenters fall far short of demonstrating the existence of a price squeeze under the exacting criteria set forth in the Vermont Order. On the contrary, the facts show that the rates in New Hampshire and Delaware permit competitors to earn a substantial gross profit.

To the extent the commenters raise non-pricing claims at all, they are equally without merit. In fact, the vast majority of the CLECs' claims here merely rehash arguments that both this Commission and the New Hampshire and Delaware commissions have already rejected. For the most part, the CLECs either seek to modify Verizon's checklist offerings in ways that go beyond the requirements of the Act, or raise issues that the Commission repeatedly has held should be addressed in other proceedings.

Finally, no commenter seriously disputes that Verizon's entry into the long distance business in its 271-approved states has produced literally hundreds of millions of dollars of benefits for consumers in the form of increased local and long distance competition. Consumers in New Hampshire and Delaware are now entitled to the same benefits.

For all these reasons, the Commission should grant this Application.

ARGUMENT

Verizon demonstrated in its Application that, both in New Hampshire and in Delaware, it is providing access to each of the 14 checklist items in substantially the same manner, and using the same systems and processes as in other states where the Commission has found that Verizon satisfies the 1996 Act in all respects. Verizon also demonstrated that its performance in both states — and in Massachusetts and Pennsylvania, where the systems are the same as in New Hampshire and Delaware, respectively, but where volumes are higher — is excellent across the board. As explained below, this continues to be true in the two most recent months for which data are available (May and June 2002).

The New Hampshire and Delaware commissions have confirmed all of this, based on exhaustive investigations that are entitled to maximum deference under this Commission's well-settled precedent. See, e.g., New York Order ¶ 51 ("Given the 90-day statutory deadline to reach a decision on a section 271 application . . . where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight."); Texas Order ¶ 4 (according state commission decision "substantial weight based on the totality of its efforts and the extent of expertise it has developed on section 271 issues").

The New Hampshire PUC conducted a comprehensive evaluation that "analyzed the broad picture of competition in New Hampshire as presented by the entire range of issues and details encountered under the NHPUC's mandate for regulating telecommunications." NH PUC Report at 10. The PUC "considered the declarations, exhibits, briefs and oral arguments submitted by" Verizon and numerous other parties. Id. at 11. The PUC "also considered the report of the independent accountants

PricewaterhouseCoopers, LLC, which . . . examined and verified that the operational support systems (OSS) and performance metrics reporting are the same in New Hampshire as in Massachusetts, where they have been found to satisfy the standards for compliance with Section 271(c)." Id. And while the PUC had originally proposed a number of conditions, the PUC ultimately found, based on additional input from the parties and significant rate and other concessions by Verizon, that "[t]he conditions accepted by Verizon NH for implementation in New Hampshire address the concerns we raised," and "that each of the 14 checklist items has been met." Id. at 17-18; see also id. at 20 ("Verizon NH has met the requirements of the Section 271 Competitive Checklist").[1]

The Delaware PSC's evaluation is based on a record that "includes the materials submitted by Verizon-DE under the DPSC's § 271 pre-filing procedure, written

[1] As Verizon has explained at length in a recent ex parte letter, there is no merit to BayRing's unfounded and unfair attack on the integrity of the New Hampshire PUC. See Ex Parte Letter from Richard Ellis, Verizon, to Marlene Dortch, FCC, WC Docket No. 02-157 (FCC filed Aug. 5, 2002) ("August 5th Ex Parte"). BayRing essentially claims that the PUC's decision was somehow improperly influenced by the New Hampshire legislature rather than based on its duty to resolve issues in the public interest. Although the New Hampshire legislature held a series of public telecommunications oversight hearings, pursuant to its authority under New Hampshire law, see id. at 4 n.8, the last of those hearings was held a month before the PUC reached its final decision, see id. at 4. In the interim, there were extensive negotiations between Verizon and the PUC's Staff that resulted in Verizon making substantial concessions, including significant rate reductions. See id. at 4-5. As the statements of the PUC's commissioners make clear, it was those concessions, not influence from the legislature (improper or otherwise), that led them ultimately to support Verizon's Application. See id. at 5-7. Moreover, as the courts have made clear, agencies are not required to "turn a deaf ear to comments from members of [the legislature]," but are required "simply to give [legislative] comments only as much deference as they deserve on the merits." DCP Farms v. Yeutter, 957 F.2d 1183, 1188 (5th Cir. 1992) (internal quotation marks omitted). In any event, this is not a proper forum in which to address BayRing's claim, which ultimately requires a determination of whether the PUC and New Hampshire legislature followed New Hampshire state law. See August 5th Ex Parte at 7-9.

testimony and other exhibits later submitted by the parties, and the transcripts of two days of evidentiary hearings." DE PSC Report at 2. That proceeding was conducted "by the DPSC's designated Hearing Examiner," and included the participation of the PSC's Staff and the Delaware Division of the Public Advocate, as wells as several CLECs. Id. The PSC relied on the "declarations of Price Waterhouse Coopers attesting to [the] congruence" between Verizon's systems in Delaware and those in Pennsylvania, and "[n]o other carrier or other party . . . contested this reliance on the Pennsylvania OSS." Id. at 13. The PSC has issued its own consultative report in which it finds "that the record presented to us supports findings that Verizon-DE has met the requirements" of the checklist. Id. at 31.

The DOJ likewise concludes that "Verizon has generally succeeded in opening its local markets in Delaware and New Hampshire to competition." DOJ Eval. at 2. The DOJ finds that "Verizon has submitted evidence to show that its OSS in Delaware are the same as those that the Commission found satisfactory in Pennsylvania," and that Verizon's "OSS in New Hampshire are the same as those that the Commission found satisfactory in Massachusetts"; that the record indicates "few complaints" regarding Verizon's OSS in New Hampshire and Delaware; and that there are no "material non-price obstacles to competition" in either state. Id. at 7, 9-10. Accordingly, "subject to the Commission's satisfying itself" as to certain pricing issues raised by commenters — on which the DOJ expresses no opinion — the DOJ "recommends

approval of Verizon's application for Section 271 authority" in New Hampshire and Delaware. Id. at 11.[2]

As demonstrated below, the conclusions of the New Hampshire PUC, the Delaware PSC, and the DOJ are correct, and Verizon's Application should be granted.

I. VERIZON SATISFIES THE REQUIREMENTS OF TRACK A.

Verizon demonstrated in its Application that, both individually and collectively, competitors in New Hampshire and Delaware are providing service predominantly over their own facilities to both business and residential subscribers, and that Track A is therefore met in both states. See Application at 5-9. No party takes issue with any of these facts.

Cavalier nonetheless argues (at 18) that Verizon does not satisfy Track A in Delaware because Cavalier is not offering its service to customers in the most rural parts of the state. As the Commission has held, however, section 271(c)(1)(A) does not "require any specified level of geographic penetration by a competing provider. The plain language of that provision does not mandate any such level, and therefore, does not support imposing a geographic scope requirement." Michigan Order ¶ 76. Accordingly, Cavalier's only Track A related claim must be rejected.[3]

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[2] The DOJ explains that it "will not attempt to make its own independent determination whether prices are appropriately cost-based," given "the Commission's experience and expertise in rate-making issues." DOJ Eval. at 8, 10 (internal quotation marks omitted).

[3] Cavalier also claims (at 16-17) that Verizon somehow fails to satisfy Track A because of a dispute over the terms of the interconnection agreement that Cavalier voluntarily agreed to in Delaware. That dispute, however, has nothing to do with Track A, and is already being addressed elsewhere in any event. See infra Section II.B.

II. VERIZON SATISFIES THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST.

Verizon demonstrated in its Application that its checklist offerings in New Hampshire and Delaware, as well as the systems and processes used to provide them, are the same as those in other Verizon states that this Commission previously has found satisfy the requirements of the Act in all respects. Verizon also demonstrated that its performance in providing access to the various checklist items in both New Hampshire and Delaware has been excellent, and this continues to be the case. For example, in May and June 2002, Verizon provided on time for competing carriers in New Hampshire and Delaware 100 percent of their interconnection trunk orders, 100 percent of their collocation arrangements, more than 99 percent of their network element platform orders, more than 95 percent of their stand-alone voice-grade loops, more than 97 percent of their hot-cut loop orders, and approximately 99 percent of their unbundled DSL-capable loop orders. See Lacouture/Ruesterholz NH Reply Decl. ¶¶ 5, 18, 39, 78, 80, 82; Lacouture/Ruesterholz DE Reply Decl. ¶¶ 5, 18, 35, 75, 80, 83. Verizon's performance also has continued to be excellent in Massachusetts and Pennsylvania, where volumes are larger. See Lacouture/Ruesterholz NH Reply Decl. ¶¶ 6, 19, 40, 79, 81, 83; Lacouture/Ruesterholz DE Reply Decl. ¶¶ 6, 19, 36, 76, 81, 84.

Moreover based on comprehensive investigations, both the New Hampshire PUC and the Delaware PSC have found that Verizon satisfies all the requirements of the checklist. As demonstrated below, these conclusions are obviously correct.

A. Pricing Issues.

As Verizon demonstrated in its Application, both the New Hampshire PUC and the Delaware PSC have found that Verizon's wholesale rates for unbundled network

elements comply fully with the Act and the Commission's rules. These determinations, of course, are entitled to great deference under this Commission's well-settled precedent. See Application at 12-13 & n.10, 57-58 & n.39. Under the Commission's own standard, which it is bound to apply, it may reject Verizon's Application only if it finds that "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." New York Order ¶ 244; see also Vermont Order ¶ 15 (same). As described below, the comments present no evidence that even remotely suggests that either of these two conditions is present here.

Moreover, even separate and apart from the fact that both state commissions aggressively applied the Commission's TELRIC standard, both the loop and non-loop rates set by the New Hampshire PUC — and the loop rates set by the Delaware PSC — also satisfy this Commission's well-established benchmark standard. As such, those rates must be approved for this independent reason as well, and the Commission need not even reach claims attacking various aspects of these state rate determinations.

New Hampshire Switching Rates. Verizon demonstrated in its Application that, although the New Hampshire PUC established TELRIC-compliant switching rates, in the course of its negotiations with the PUC's Staff and other parties, Verizon agreed to reduce them to levels that satisfy this Commission's benchmark test when compared to the switching rates recently adopted in New York. See Application at 63; Hickey/Garzillo/Anglin Decl. ¶¶ 48, 60-62. At least one of the long distance carriers readily concedes that this resolves any conceivable issue with respect to these rates. See WorldCom at 1 ("The Commission should . . . direct Verizon to bring its non-loop rates

[in Delaware] in-line with those in New York, as Verizon did for New Hampshire."). AT&T nonetheless claims that even this is not good enough, despite the fact that it previously argued for this very result. See Brief of AT&T and AT&T Broadband, DT 01-151, at 8 (NH PUC filed Jan. 30, 2002) (Application, App. B-NH, Tab 20) ("To the extent that a benchmark analysis is used to defend the existing New Hampshire switching rates, [Pennsylvania and New York] are the appropriate benchmark comparisons at the present time.").

First, AT&T argues (at 6-8) that the use of a benchmark analysis of all switching-related rates is inappropriate, and that the Commission is instead required to perform an individual TELRIC analysis of each non-loop element. But the Commission has previously held that "we combine per-minute switching with other non-loop rates such as port, signaling, and transport rates *because competing LECs most often purchase them together rather than separately*, and because state commissions often differ in determining how to recover certain costs." Rhode Island Order ¶ 40 (emphasis added); see also New Jersey Order ¶ 52 ("aggregating per-minute switching with other non-loop rates such as port, signaling, and transport rates appropriately accounts for, among other things, rate structure difference between states"). Based on this logic, the Commission has repeatedly applied its benchmark analysis to the various non-loop elements (that are purchased only in combination) as a whole for benchmarking purposes. See, e.g., Massachusetts Order ¶ 25; Arkansas/Missouri Order ¶ 60; New Jersey Order ¶ 52; Maine Order ¶ 33; Rhode Island Order ¶ 40; Pennsylvania Order ¶ 67. In New Hampshire, as in Verizon's other 271-approved states, CLECs have *always* purchased switching together

with transport (as well as with other elements). See Application at 78. Under the Commission's own precedent, therefore, all non-loop rates must be analyzed together.

Indeed, the Act contains no support for the contrary approach that AT&T suggests. All that the checklist requires is that unbundled elements be provided "in accordance with section 252(d)(1)" — the very provision that assigns state commissions the task of setting individual rates. This Commission has made clear that its role in the section 271 context is not to set particular rates (a task assigned to the states), but rather to assure itself generally that "basic TELRIC principles [have not been] violated," and that "the state commission" has made no "clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." Vermont Order ¶ 15. As the D.C. Circuit has recently made clear, "[w]hen the Commission adjudicates § 271 applications, it does not — *and cannot* — conduct de novo review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles."[4] Because the Commission's role is limited to determining whether the rates generally fall within "the range that the reasonable application of TELRIC principles would produce" — and the rates at issue are only paid in combination as part of a UNE platform arrangement — the Commission's well-established practice of analyzing the non-loop rates taken together is fully consistent with the Act.

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[4] Sprint Communications Co. v. FCC, 274 F.3d 549, 556 (D.C. Cir. 2001) (emphasis added); see also AT&T Corp. v. FCC, 220 F.3d 607, 615 (D.C. Cir. 2000) ("The FCC does not conduct de novo review of state pricing determinations in section 271 proceedings, nor does it adjust rates to conform with TELRIC. It assesses only whether those rates comply with basic TELRIC principles.") (citation omitted); New York Order ¶ 244; Michigan Order ¶¶ 288, 290.

In fact, this approach is no different from the approach the FCC has already adopted with respect to Verizon's checklist performance in previous section 271 proceedings. For example, the Commission has concluded that its analysis of Checklist Item 4 "cannot focus on [Verizon's] performance with respect to any single metric or any single type of loop." Instead, the Commission will "examine the performance data for all of the various loop metrics, as well as the factors surrounding those metrics, in order to obtain a comprehensive picture of whether [Verizon] is providing unbundled local loops in accordance with the requirements of checklist item 4." New York Order ¶ 278; see also Rhode Island Order ¶ 88 ("[G]iven Verizon's generally acceptable performance for all other categories of loops, and recognizing that high capacity loops represent only a small percentage of overall loop orders in Rhode Island . . . we find that Verizon's performance is in compliance with checklist item four."); Connecticut Order ¶ 26 ("Given the totality of the evidence, we find that Verizon's performance for high capacity loops complies with checklist item 4."). Just as it looks at Verizon's "overall" performance reported in its metrics to obtain a "comprehensive picture," so too may it look at UNE rates overall (that is, total non-loop rates, or combined loop and non-loop rates) to determine that those rates fall within — and in this case *well* within — the range of rates that a reasonable application of TELRIC would produce.

AT&T's position also is inconsistent with claims it has made in other parts of this case and in other proceedings. For example, AT&T has repeatedly argued that the Commission is required to consider the aggregate rate for a UNE platform, and the CLECs' ability to make a profit using that platform, in determining whether granting Verizon section 271 authority would be in the public interest. See AT&T at 36-38, 50.

That argument, while misplaced, undermines AT&T's position that switching and transport rates should not be combined for benchmarking purposes.

Second, as a fall-back to its argument that the Commission cannot properly benchmark all non-loop rates in the aggregate, AT&T claims that such a comparison would be inappropriate here because the Commission's USF cost model "vastly overstates cost differences for transport and for tandem switching" in New Hampshire vis-a-vis New York, "thereby substantially overstating any such cost justification for non-loop rate differences." Id. at 6-7 (emphasis omitted). Of course, this directly contradicts AT&T's own claim before the New Hampshire PUC that the rates recently adopted in New York *are* the ones that should be use in a benchmark comparison in New Hampshire. As Verizon explained at length in a recent ex parte letter, moreover, AT&T's claims are wrong on several levels.[5]

As an initial matter, this latest claim is an amazing display of chutzpah even for AT&T. It amounts to nothing less than a full-fledged attack on the Commission's USF model, despite the fact that AT&T previously has championed this model for use *both* in determining relative costs between states (rural and non-rural alike) *and* for determining TELRIC costs for non-loop elements in individual states (again, rural and non-rural alike). See Benchmarking Ex Parte at 1-2. Indeed, AT&T's claim is particularly disingenuous given that the transport costs in the USF model are taken directly from the HAI cost model that AT&T itself has sponsored in numerous proceedings, *including the New Hampshire TELRIC proceeding*, as well as in any number of proceedings leading up to this Commission's adoption of the USF model, and the TELRIC proceedings used in

[5] See Ex Parte Letter from Richard Ellis, Verizon, to Marlene Dortch, FCC, WC Docket No. 02-157 (FCC filed Aug. 6, 2002) ("Benchmarking Ex Parte").

other states throughout Verizon's footprint. See id. at 4; Federal-State Joint Board on Universal Service; Forward-Looking Cost Mechanism for High Cost Support for Non-Rural LECs, Fifth Report and Order, 13 FCC Rcd 21323, ¶ 75 (1998); Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996, Order Granting in Part and Denying in Part, DE 97-171, Order No. 23,738, at 82-83 (NH PUC July 6, 2001) (Application, App. I-NH, Tab 3). AT&T also, of course, has repeatedly championed the USF model itself and defended its accuracy for purposes of determining relative cost levels between states in the federal courts of appeals and before the Supreme Court.

In any event, AT&T has not shown that the USF model overstates transport costs in New Hampshire. For example, AT&T claims that the USF model improperly assumes that very high-capacity transport facilities (e.g., OC-48) are used both in rural and urban states, even though rural states are more likely to use lower-capacity transport facilities (e.g., OC-3). See AT&T Lieberman Decl. ¶ 12. But the fact of the matter is that Verizon uses OC-48 facilities in both New Hampshire and New York, and plans to continue doing so in the future. See Benchmarking Ex Parte at 2. Although AT&T suggests (at 6) that this should not be the case because New Hampshire is a "very rural" state, the facts show otherwise. For example, New Hampshire is the 18th most densely populated state in the country,[6] and is not among the states that are net recipients of federal high-cost universal service support. See Benchmarking Ex Parte at 3 & n.2.

Moreover, even apart from the fact that it has not shown that the USF model overstates transport costs in New Hampshire or in rural states, AT&T ignores the fact that

[6] See Netstate, Census 2000 State Population Information, at http://www.netstate.com/states/tables/st_population.htm.

the model likely *understates* switching costs in such states. See id. at 3. In "rural" areas with low traffic volumes, Verizon makes heavy use of a host/remote switch architecture that is more costly than the standard switch architecture that would be appropriate in less "rural" areas. See id. Yet AT&T wholly fails to take this or any other offsetting factors into account.

Third, and finally, AT&T claims (at 12-14, 16) that the New Hampshire PUC failed to adhere to TELRIC in its original proceeding to establish the switching rates in New Hampshire. While those claims are misplaced, they also are irrelevant because the rates originally set by the PUC have been replaced with new rates that benchmark to New York. Accordingly, there is no need to address those issues here. See, e.g., Pennsylvania Order ¶ 63 (where rates pass a benchmark test, it is irrelevant that the state commission did "not apply TELRIC or d[id] so improperly"); Kansas/Oklahoma Order ¶ 65 (upholding SBC's "promotional" rates for certain recurring and non-recurring charges in Oklahoma that were not supported by independent cost studies on the grounds that such rates benchmarked successfully against rates approved in Texas); Arkansas/Missouri Order ¶ 55 ("Even if some or all of the commenters' allegations are correct and that specific inputs might not be TELRIC-compliant, we conclude that SWBT's voluntarily-discounted rates are within a TELRIC-based range.").

New Hampshire Loop Rates. As demonstrated in the Application, the New Hampshire PUC established rates for unbundled loops in an extensive pricing proceeding in which it adopted inputs and assumptions that are fully consistent with what this Commission has found TELRIC-compliant in the past. See Application at 58-64; Hickey/Garzillo/Anglin Decl. ¶¶ 13-56. In addition, Verizon demonstrated that the New

Hampshire loop rates are TELRIC-compliant for the separate and independent reason that they satisfy the Commission's established benchmark standard when compared to the recently adopted New York rates. See Application at 76-77; Hickey/Garzillo/Anglin Decl. ¶ 59. Neither AT&T nor WorldCom disputes any aspect of this showing. Nor does any other commenter contend that the New Hampshire loop rates fail to satisfy the Commission's benchmark test.[7] Under this Commission's settled standard, that is the end of the matter.

BayRing nonetheless complains about a handful of the many dozens of inputs and assumptions that the PUC used in establishing the New Hampshire loop rates. Because the New Hampshire loop rates satisfy the Commission's benchmark test, however, these claims are ultimately irrelevant. In any event, BayRing's claims are also wrong.

First, BayRing claims (at 13-14) that the 10.46 percent cost of capital adopted by the PUC is "outdated and inflated." In reality, the opposite is true. The cost of capital set by the PUC does not adequately account for either the risks that Verizon is subject to in a competitive market, or the added risk inherent in the TELRIC methodology itself — factors this Commission has made clear must be taken into account.[8] Remarkably,

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[7] BayRing argues (at 23-24) that the Commission should compare the loop rates in New Hampshire with those in Vermont, rather than those in New York, but there is no basis to that approach. The Commission has repeatedly held that a section 271 applicant "need not demonstrate" that the rates in the applicant state "pass the benchmark test for each and every state that it might be compared with to show that its rates are within the reasonable range of what TELRIC would produce." Arkansas/Missouri Order ¶ 56; see also Rhode Island Order ¶ 39.

[8] See, e.g., Reply Brief for Petitioners United States and the Federal Communications Commission, Verizon Communications, Inc. v. FCC, Nos. 00-511, *et al.*, at 12 n.8 (U.S. filed July 23, 2001) ("[A]n appropriate cost of capital determination takes into account not only existing competitive risks . . . but also risks associated with the regulatory regime to which a firm is subject."); see also Petitions of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the Virginia State Corporation Commission,

BayRing claims (at 14) that the cost of capital should be reduced because of increased "uncertainties in the current financial marketplace." That, of course, has matters completely backwards. Increased uncertainty — which increases Verizon's risks in providing UNEs — justifies an *upward* adjustment in the cost of capital adopted by the PUC. See Hickey/Garzillo/Anglin Reply Decl. ¶¶ 7-9; Verizon Communications Inc. v. FCC, 122 S. Ct. 1646, 1677 (2002) (cost of capital should "be adjusted upward if the incumbents demonstrate the need").

In any event, this cost of capital is lower than the 11.25 percent cost of capital this Commission has adopted as a "reasonable starting point for TELRIC calculations." Local Competition Order[9] ¶ 702; see also Hickey/Garzillo/Anglin Reply Decl. ¶ 7. It also is closely comparable to what this Commission has approved in prior section 271 applications. See, e.g., Pennsylvania Order ¶ 57 (approving as "consistent with the TELRIC methodology" 9.83 percent cost of capital established by the Pennsylvania PUC).[10] And the New Hampshire PUC has recently opened a new proceeding (DT 02-

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Transcript at 3202, CC Docket Nos. 00-218, 00-249, 00-251 (FCC Oct. 23, 2001) (testimony of Terry Murray, AT&T) ("[A]ll the model assumptions [under TELRIC] have to be consistent. So, to the degree that it requires a competitive market to get all of the other assumptions, that would be true for the cost of capital as well.").

[9] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order") (subsequent history omitted).

[10] It is simply irrelevant that some other state commission has adopted (erroneously) a cost of capital that is lower than what the New Hampshire PUC adopted, as both the Commission and the D.C. Circuit have repeatedly held. See, e.g., Arkansas/Missouri Order ¶ 56 (no requirement to "pass the benchmark test for each and every state that it might be compared with to show that its rates are within the reasonable range of what TELRIC would produce"); Massachusetts Order ¶ 28 (rejecting AT&T's request that the Commission compare Verizon's rates to those "found to be TELRIC-based in the SWBT states of Texas, Kansas, or Oklahoma"); Kansas/Oklahoma Order ¶ 82 (rejecting AT&T's request that the Commission compare SBC's rates in Oklahoma to those in Kansas instead of to Texas); Sprint, 274 F.3d at 561 (upholding Commission's

110) to examine various pricing input issues, including Verizon's cost of capital. See Hickey/Garzillo/Anglin Reply Decl. ¶ 10; Order of Notice, DT 02-110 (NH PUC June 18, 2002) (Application, App. O-NH, Tab 14).

Second, BayRing claims (at 16-18) that the New Hampshire PUC did not properly account for the savings that BayRing claims have resulted from the Bell Atlantic/GTE merger. But the New Hampshire PUC specifically addressed this claim during the course of the state proceeding, where it ultimately determined that no further reduction in Verizon's rates was warranted. See Hickey/Garzillo/Anglin Reply Decl. ¶ 14. In any event, any potential merger savings that Verizon may obtain are not relevant because TELRIC does not look at *Verizon's* actual future costs, but rather at those of a hypothetical efficient network. So, whether or not Verizon has obtained merger savings is beside the point. See id. ¶ 12.[11] And BayRing fails to provide any evidence whatsoever that the merger actually produced net savings in the cost of providing UNEs after offsetting cost increases (resulting from factors ranging from regulatory rulings to the dramatic increase in uncollectibles) are taken into account. See Hickey/Garzillo/Anglin Reply Decl. ¶ 13.

Third, BayRing claims (at 20-21) that the cost model adopted by the New Hampshire PUC to set loop rates — the TELECOM model developed by an outside

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determination); AT&T, 220 F.3d at 615 ("application of TELRIC principles may result in different rates in different states").

[11] While BayRing argues (at 17) that the Rhode Island PUC has reached a contrary decision, and has found it appropriate to reduce UNE rates to account for merger savings, that decision is obviously not controlling here. Rather, as the Commission has held, the "use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC vary from state to state." Michigan Order ¶ 291; see AT&T, 220 F.3d at 615 ("application of TELRIC principles may result in different rates in different states").

consulting firm, Ben Johnson Associates, and sponsored by the PUC's Staff — improperly relies on a "star" design of feeder plant, rather than a "pine tree" design. Here, too, however, the PUC specifically addressed and rejected this claim during the course of the state pricing proceedings. See id. ¶¶ 17-18. Indeed, the PUC's Staff specifically found that "'[t]he Telecom Model's accuracy is demonstrated by the maps it produces of particular wire-center networks.'"[12] And the PUC itself reached the same conclusion.[13] BayRing provides no evidence that this finding was a clear error.

Fourth, BayRing claims (at 21) that the rates adopted by the PUC permit Verizon to double-recover its capital costs for loop fiber — once through its loop charges, and a second time through its dark-fiber charges. That is not the case, as the PUC — as well as the state commissions in New York, and Massachusetts — have expressly found. See Hickey/Garzillo/Anglin Reply Decl. ¶ 22.

Fifth, BayRing claims (at 18-20) that the New Hampshire PUC applied the pricing standard articulated by the Eighth Circuit in Iowa Utilities Board v. FCC,[14] rather than TELRIC. The PUC itself has made crystal clear that BayRing is wrong. See NH PUC Reconsideration Order at 12-13 ("While we did not note in our July 6th Order that Iowa III had been stayed, our determination of costing is firmly based on forward-looking costs as defined by the [1996 Act], 47 C.F.R. § 51, and the FCC's Local Competition

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[12] Brief of AT&T and AT&T Broadband, DT 01-151, at 5 (quoting Order Granting in Part and Denying Part, DE 97-171, Order No. 23,738, at 86 (NH PUC July 6, 2001)).

[13] See Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996, Order Addressing Motions for Reconsideration, DE 97-171, Order No. 23,847, at 7, 14 (NH PUC Nov. 21, 2001) ("NH PUC Reconsideration Order") (Application, App. I-NH, Tab 4); Hickey/Garzillo/Anglin Reply Decl. ¶ 18.

[14] 219 F.3d 744 (8th Cir. 2000) (subsequent history omitted).

First Report and Order. Our decision was not based upon a misunderstanding that Iowa III is the law of the nation as a whole or of New Hampshire. Rather, our decision is consistent with a sound TELRIC analysis.").

Finally, BayRing argues (at 24-27) that the New Hampshire rates should be rejected because they are "temporary," but that is simply not true.[15] The rates at issue here are already effective, and have been since before Verizon filed its Application. See Hickey/Garzillo/Anglin Reply Decl. ¶¶ 5-6. The last rates to become effective — those established in the state section 271 proceeding — went into effect on June 14, 2002. See id. ¶ 5; Letter from Thomas B. Getz, New Hampshire PUC, to J. Michael Hickey, Verizon, DT 01-151 (July 2, 2002) (acknowledging "that Verizon's SGAT as modified on June 14, 2002 is in compliance with the [PUC's] Section 271 Opinion Letter and the rates therein are effective June 14, 2002"). And, as the Commission and the D.C. Circuit have held, the fact that a *future* pricing proceeding might affect a Bell company's offerings in the future does not affect whether a BOC satisfies the checklist at the time it files its application. See Georgia/Louisiana Order ¶ 96 ("[W]e do not believe that the existence of a new Georgia cost docket, without more, should affect our review of the currently effective rates submitted with BellSouth's section 271 application."); Rhode Island Order ¶ 31; Massachusetts Order ¶ 36; New York Order ¶ 247; see also AT&T, 220 F.3d at 617.

[15] BayRing makes a similar claim (at 27-29) with respect to the rates for collocation power, which also is without merit. While the New Hampshire PUC has recently modified its rates for collocation power, Verizon filed a compliance tariff on June 25, 2002. See Application at 23-24 & n.18; Lacouture/Ruesterholz NH Decl. ¶ 79. Although Verizon has appealed the PUC's decision, the rates remain in effect in the meantime. See Texas Order ¶ 386 (finding that SBC complied with its obligation to provide reciprocal compensation consistent with the Texas PUC's orders, despite the fact that SBC was appealing those orders).

Delaware Switching Rates. As Verizon demonstrated in its Application, the Delaware PSC established TELRIC-compliant switching rates based on inputs and assumptions that are consistent with what this Commission has approved in the past. As the PSC states in its consultative report, "[w]e continue to believe that the rates we determined, both in 1997 and 2001, were, and remain, TELRIC-compliant." DE PSC Report at 11. Moreover, AT&T itself previously *defended* these switching rates as TELRIC-compliant when Verizon challenged that part of the PSC's original pricing order in federal district court. See Martin/Garzillo/Sanford Reply Decl. ¶ 5. And while AT&T has recently filed an appeal of the new non-recurring rates adopted by the PSC, it chose once again *not* to challenge the switching rates. See Ex Parte Letter from Amy Alvarez, AT&T, to Marlene Dortch, FCC, WC Docket No. 02-157 (FCC filed Aug. 8, 2002) (attaching summary judgment papers challenging only the Delaware non-recurring rates in AT&T Communications of Delaware, Inc. v. Verizon Delaware, Inc., et al., C.A. No. 02580 (D. Del.)).

AT&T nonetheless challenges the Delaware switching rates here, making a host of claims that it failed to present first to the state commission. As the Commission has held, however, "it is both impracticable and inappropriate for us to make many of the fact-specific findings the parties seek in [a] section 271 review, when many of the [state commission's] fact-specific findings have not been challenged below." Vermont Order ¶ 20.[16] While AT&T's claims must be rejected on that basis alone, they also fail on their merits.

[16] See also Massachusetts Order ¶ 147 (carriers should "bring issues . . . to the attention of state commissions so that factual disputes can be resolved *before* a BOC applicant files a section 271 application with this Commission") (emphasis added); New

First, AT&T argues that the switching discount and other switching-cost data adopted by the Delaware PSC are now stale, and that switching costs have declined since the PSC established its switching rates. See AT&T at 10; see also WorldCom Frentrup Decl. ¶ 7. The Commission has repeatedly held, however, that "mere evidence that data underlying a rate is old . . . does not demonstrate that the [state commission] committed any clear error when it adopted the rate." Vermont Order ¶ 37.[17]

In fact, this case parallels the facts before the Commission when it rejected these same claims in Vermont. As in Vermont, while AT&T complains about the age of the switching data, it has failed to petition the Delaware PSC to initiate a new proceeding to update that cost data. See Martin/Garzillo/Sanford Reply Decl. ¶¶ 7, 10; Vermont Order ¶ 22 ("neither AT&T nor WorldCom have asked the Vermont Board to require Verizon to update the data and inputs for its switching cost studies"). Moreover, just as in Vermont, AT&T has failed to take this step despite an open invitation from the Delaware PSC that it do so. See Phase II Order[18] ¶ 26 ("CLECs have sufficient motivation to initiate future rate proceedings"); Vermont Order ¶ 23 ("Vermont Board has shown its willingness to update Vermont UNE rates as new information may warrant");

York Order ¶ 36 (holding that it is only "[t]hrough state proceedings" that the BOC will "be able reasonably to identify and anticipate certain arguments and allegations that parties will make in their filings before the Commission").

[17] See also AT&T, 220 F.3d at 617-18 ("If new information automatically required rejection of section 271 applications," such applications "could [never] be approved in this context of rapid regulatory and technological change."); Maine Order ¶ 30 ("The fact that rates may be subject to change based on new information does not, however, require rejection of a section 271 application."); Rhode Island Order ¶ 31; New York Order ¶ 247; Martin/Garzillo/Sanford Reply Decl. ¶ 6.

[18] Application of Verizon Delaware Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Findings, Opinion and Order No. 5967, Docket No. 96-324, Phase II (DE PSC June 4, 2002) ("Phase II Order") (Application, App. E-DE, Tab 33).

Martin/Garzillo/Sanford Reply Decl. ¶¶ 7, 10. Indeed, the case for rejecting AT&T's claim here is even stronger than it was in Vermont because, as noted above, AT&T has previously defended the Delaware rates about which it now complains. See Martin/Garzillo/Sanford Reply Decl. ¶ 5.

AT&T will nonetheless try to distinguish the facts here from those in Vermont on the grounds that, while AT&T has not petitioned the Delaware PSC to open a new rate proceeding, it did previously ask the PSC to update the switching data in the context of a different proceeding — the Phase II proceeding. See AT&T at 11. This argument is misguided. As the PSC itself has explained, Phase II was an expedited proceeding designed only to establish the rates the Commission did not set in its original Phase I proceeding, and to address the specific issue raised in the remand of the district court in Bell Atlantic-Delaware, Inc. v. McMahon, 80 F. Supp. 2d 218 (D. Del. 2000). See Martin/Garzillo/Sanford Reply Decl. ¶ 9. Thus, it was not appropriate for AT&T to attempt to shoehorn the enormous task of also re-examining its various existing rates into that proceeding. See id. ¶ 10.[19] Instead, the PSC invited parties to initiate a separate new comprehensive rate proceeding to address concerns regarding the age of the data supporting the original rates. And AT&T has failed to avail itself of that opportunity, just as AT&T still has failed to petition the Vermont commission to re-examine the switching

[19] AT&T attempts to make its request to expand the Phase II proceeding seem reasonable by arguing (at 11) that establishing new switching rates would require "virtually no additional work at all" and could be accomplished by updating only "some" of the switching inputs. As the Commission has held, however, "determination of allowable switch costs [i]s the result of a complex analysis that does not lend itself to simple arithmetic correction through the adjustment of a single input." New York Order ¶ 245; see also Phase II Order ¶¶ 23-24 (rejecting requests selectively to update only certain cost inputs).

rates after burdening this Commission's resources with its complaints in the 271 context. See Martin/Garzillo/Sanford Reply Decl. ¶¶ 7, 10.

Second, to the extent AT&T challenges specific aspects of the Delaware PSC's determination, its claims are misplaced. For example, AT&T claims (at 12) that the so-called "getting started" costs of a switch — including the costs associated with switch-processing power — should be treated as fixed costs, rather than usage-sensitive costs. However, AT&T has not only failed to raise this issue with the PSC, but this Commission previously rejected precisely the same claim in the Maine Order, which AT&T does not bother to cite. There, the Commission held that its rules "declined to prescribe the appropriate allocation of switching costs as between the line port, which must be flat-rated, and the switching matrix and trunk ports," and that the states therefore "retain the flexibility to adopt an allocation within a reasonable range." Maine Order ¶ 29.

In any event, the reality is that the "getting started" costs of a switch *are* based on the anticipated usage of that switch, since that determines the amount of switch-processing capability that Verizon purchases with a switch. See Martin/Garzillo/Sanford Reply Decl. ¶¶ 17-18; cf. Local Competition Order ¶ 755 ("the cost of capacity is determined by the volume of traffic that the facilities are able to handle"). It is a complete *non sequitur* to argue, as AT&T does (at 11-12), that, simply because such costs are borne up front when the switch is initially purchased, they should be classified as fixed costs rather than usage-sensitive costs. See Martin/Garzillo/Sanford Reply Decl. ¶ 18. The time at which certain expenditures are made is irrelevant to whether these costs are driven by usage-sensitive considerations and should be treated as usage-sensitive costs. See id. ¶ 19.

Finally, AT&T claims (at 8) that the switch utilization rates adopted by the PSC enable Verizon to "overrecover" its switch investment. AT&T's analysis is highly flawed.[20] In particular, AT&T both understates Verizon's total switching investment in Delaware, and overstates the total annual minutes of use handled by those switches. See id. ¶¶ 21-28. To cite just one example, the figure that AT&T uses for Verizon's total switching investment represents only Verizon's "material" costs, and ignores the significant additional costs that Verizon incurs in connection with the engineering, furnishing, and installation of the switch, the power costs associated with operating a switch, the costs for land and building expenses to house the switch, and the equipment needed to provide vertical features. See id. ¶¶ 22-25. In any event, in addition to being fraught with errors, AT&T's claim is precisely the kind of intensively fact-bound determination that must be presented in the first instance to the state commission. See, e.g., Vermont Order ¶¶ 31-32, 36; Maine Order ¶ 30. And AT&T, of course, has failed to do so.

Delaware Non-Recurring Rates. As Verizon demonstrated in its Application, the Delaware PSC established non-recurring rates that it found "comply with the FCC's TELRIC methodology." Phase II Order ¶ 91; see also DE PSC Report at 10-11 (confirming that the Delaware rates are "TELRIC-compliant"). AT&T is the only party to challenge these rates, but it does not come close to showing any "clear error" on the part of the Delaware PSC.

[20] There also is no basis in fact to AT&T's speculative claim that the Delaware switching rates are inflated because Verizon may have improperly used the SCIS/MO model to generate its switching costs. See Martin/Garzillo/Sanford Reply Decl. ¶ 29.

As an initial matter, the cost model and related inputs that the PSC used as a starting point for establishing non-recurring costs were very different from those that were used to set the original non-recurring rates in 1997 and were overturned in the McMahon decision. See Martin/Garzillo/Sanford Reply Decl. ¶ 32. At the time the original cost model was developed, Verizon had virtually no experience in providing UNEs to competing carriers. See id. In contrast, in developing its new cost model, Verizon had years of real-world experience with CLECs on which to draw. See id. That new model first determined all of the activities that Verizon currently uses to provide UNEs, and the costs of those activities (based on a comprehensive survey of its workers to determine how much time it currently took them to complete each of those activities). See id. ¶ 36. Using these actual activities and work times as a *starting point*, Verizon then developed and applied a series of "Forward-Looking Adjustment Factors" in order to account for any process and systems improvements that might exist in a hypothetical TELRIC network, based on "the most efficient technology and/or processes that are deployable." Id. ¶ 37 (quoting id. Att. 2 (Verizon, Non-Recurring UNE Cost Study Forward Looking Provisioning Process Panel Instructions)). Verizon then applied these factors to its actual activities and times to establish the costs that Verizon would "expect to achieve in 'the most efficient environment.'" Id. A Verizon statistician then validated these estimates. See id. ¶ 38.

The new cost model used to establish non-recurring rates in Delaware is in essence the same one that was recently used by the state commissions in New York and New Jersey to set the non-recurring rates in those states. See id. ¶ 35. Indeed, the non-recurring cost model in Delaware was developed in the same fashion as the one in New

York. See id. In New York, Verizon had submitted a non-recurring cost model in 1997 that was similar to the original cost study that was submitted in Delaware. See id. The Administrative Law Judge ("ALJ") overseeing the New York TELRIC proceeding required significant modifications to that model, however, which Verizon made. See id. After several subsequent rounds of review, the ALJ concluded that Verizon had "made a credible effort to produce a forward-looking study of its nonrecurring costs," and had resolved "any concerns about the statistical validity of the study" supporting its work-time estimates.[21] The New York PSC agreed, finding that the ALJ had adequately explained "the basis on which he found Verizon's current studies to be generally acceptable."[22] Moreover, the New Jersey BPU — reviewing a cost model that also was essentially the same one used in New York — reached a similar conclusion, finding that Verizon's non-recurring cost methodology was "sound, in that it makes reasonable estimates of the time currently taken for each activity."[23] And this Commission found that "AT&T has not presented persuasive evidence that the New Jersey Board committed clear error in . . . approving Verizon's non-recurring cost model." New Jersey Order ¶ 64.

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[21] Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Recommended Decision on Module 3 Issues by Administrative Law Judge Joel A. Linsider, Case 98-C-1357, at 186, 188 (NY PSC May 16, 2001) (internal quotation marks omitted); see Martin/Garzillo/Sanford Reply Decl. ¶ 35.

[22] Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Order on Unbundled Network Element Rates, Case 98-C-1357, at 141 (NY PSC Jan. 28, 2002); see Martin/Garzillo/Sanford Reply Decl. ¶ 35.

[23] Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Decision and Order, Docket No. TO00060356, at 162 (NJ BPU Mar. 6, 2002).

Although the Delaware PSC's proceeding to establish non-recurring costs used as its starting point the new Verizon cost model — essentially the same model used in New York and New Jersey — it also ordered additional "alterations to the inputs and assumptions" in that model, which it found "would allow the model to be used to produce TELRIC-compliant NRC rates." Phase II Order ¶ 85; see Martin/Garzillo/Sanford Reply Decl. ¶ 44. In particular, the PSC ordered reductions in Verizon's work-time estimates; prohibited Verizon from imposing up-front charges for service disconnection; eliminated premium charges for expedited work; and reduced the common overhead charge applied to Verizon's non-recurring rates. See Phase II Order ¶¶ 38-40, 90, 98-103; Martin/Garzillo/Sanford Reply Decl. ¶ 47. The effect of these changes was to reduce the non-recurring rates even further still. See Martin/Garzillo/Sanford Reply Decl. ¶ 35.

Despite all this, AT&T claims (at 31) that Verizon's cost model "fails to look at the most efficient processes available rather than its existing processes." That is simply not true. As described above, Verizon's model uses existing processes only as a starting point to estimate costs, but then modifies those processes to account for the technology and processes that would exist in a TELRIC environment. See Martin/Garzillo/Sanford Reply Decl. ¶ 45. This is the same basic approach that the Commission has approved as TELRIC-compliant in the past. See, e.g., Georgia/Louisiana Order ¶ 36 (approving as TELRIC-compliant cost study that applied "forward-looking criteria" to existing loops "rather than reproducing the existing network"). Moreover, the courts have upheld this same approach.[24]

[24] See, e.g., AT&T Communications of South Cent. States, Inc. v. BellSouth Telecomms., Inc., 20 F. Supp. 2d 1097, 1101 (E.D. Ky. 1998); MCI Telecomms. Corp. v. BellSouth Telecomms., Inc., 40 F. Supp. 2d 416, 421-22 (E.D. Ky. 1999).

Nor is there merit to AT&T's claim (at 32) that "it is premature even to consider Verizon's 271 application in Delaware" until AT&T's most recent appeal of the PSC's decision is resolved. As the Commission has repeatedly recognized, the fact that a particular state determination is currently under review — whether by the state commission itself, a court, or this Commission — in no way affects a BOC's ability to demonstrate that it satisfies the requirements of section 271. See, e.g., Massachusetts Order ¶ 37 (approving loop rates that were subject to challenge in federal district court in Massachusetts); Texas Order ¶ 386 (finding that SBC provided reciprocal compensation consistent with the Texas PUC's orders, despite the fact that SBC was appealing those orders); Rhode Island Order ¶ 54 (approving switching rates that the Rhode Island commission would "soon" re-review). Indeed, as the Commission and the D.C. Circuit have recognized, if that were the rule, "section 271 applications would never be granted," Rhode Island Order ¶ 46, which is AT&T's all-too-obvious motive here.

Just as AT&T fails to establish any "clear error" with respect to the Delaware non-recurring rates as a whole, it fails to demonstrate a "clear error" with respect to the handful of specific rates it challenges.

First, AT&T claims (at 32) that Verizon's charge for feature change service orders is too high. As an initial matter, however, AT&T failed to raise this issue in the state pricing proceeding and, therefore, should not be permitted to do so for the first time here under this Commission's established precedent. See, e.g., Vermont Order ¶ 20; Massachusetts Order ¶ 147. Indeed, AT&T complained about this same rate in the New Jersey section 271 proceedings before this Commission, where the Commission found "no basis to conclude that the New Jersey Board improperly approved Verizon's service

order charge for feature changes." New Jersey Order ¶ 70. Moreover, the Commission noted that the issue was before the New Jersey Board on reconsideration, and that it would "defer to the state's resolution of this fact-specific question." Id. ¶ 72.[25]

In any event, AT&T has not demonstrated that the Delaware PSC has committed a clear error in approving the feature change service order charge at issue here. See Martin/Garzillo/Sanford Reply Decl. ¶ 51.[26] Indeed, the New York PSC recently approved a non-recurring rate for feature changes based on essentially the same approach used to calculate the rate at issue here. See id. The work-time estimates used in both states were based on studies conducted in conjunction with Andersen Consulting. See id. Those studies did not calculate work times for individual activities, but instead grouped together into "families" various activities that were determined to be similar in nature — such as a "UNE loop" family and a "UNE platform" family. See id. The rates adopted by the New York and Delaware commissions included feature changes in the "UNE loop" family. See id. While AT&T claims (at 32) that a feature change is more closely comparable to a platform order — or, put differently, that this charge belongs in the "UNE platform" family — this is precisely the kind of fact-specific rate-structure question that this Commission has held should be left to the state commission to determine. See Martin/Garzillo/Sanford Reply Decl. ¶ 52; New Jersey Order ¶ 72; see

[25] Although the New Jersey BPU has recently reduced the feature change service order charge, this merely shows that "different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce." Georgia/Louisiana Order ¶ 23.

[26] Verizon has recently discovered that, in complying with the Delaware PSC's order, it inadvertently neglected to update the work times and associated costs for the feature change service order charge. See Martin/Garzillo/Sanford Reply Decl. ¶ 53. Verizon is therefore filing a correction with the PSC, which will reduce this charge from $9.01 to $5.98. See id.

also Maine Order ¶ 29. This is particularly true where, as here, this single charge — one of several hundred non-recurring rates — applies only in the limited circumstance where a CLEC's *existing* customers wish to change their vertical features. See Martin/Garzillo/Sanford Reply Decl. ¶ 52.

Second, AT&T claims (at 32-35) that the non-recurring charge for a field installation (also referred to as a "field dispatch" or "premises visit") is inappropriate, because Verizon is already recovering the costs for these activities in its recurring loop rates (which AT&T does not challenge as too high here). But the conclusion that the Delaware PSC took with respect to this issue is the same conclusion that the commissions in New York and New Jersey reached with respect to this issues. See id. ¶ 54.[27] In any event, AT&T is wrong on the merits. Verizon's non-recurring cost model includes only the one-time costs for work that its field technician performs to provision a CLEC's service order. See Martin/Garzillo/Sanford Reply Decl. ¶ 55. Verizon does *not* recover these costs in its recurring rates. See id. This approach is consistent with settled Commission precedent. See id.; Local Competition Order ¶¶ 742-743 ("[I]ncumbent LECs' rates for . . . unbundled elements must recover costs in a manner that reflects the way they are incurred.");[28] Investigation of Interstate Access Tariff Non-Recurring Charges, Memorandum Opinion and Order, 2 FCC Rcd 3498, ¶¶ 32-33 (1987) ("We see

[27] AT&T fails to acknowledge these decisions, and instead points to contrary decisions reached in Massachusetts and by a Pennsylvania ALJ. See AT&T at 35 n.24. But as this Commission has recognized, "state commissions may reach different reasonable decisions on matters in dispute while correctly applying TELRIC principles." Georgia/Louisiana Order ¶ 24; see also Vermont Order ¶ 26; New York Order ¶ 244.

[28] AT&T's quotes paragraph 744 of the Local Competition Order to support its argument that charges associated with dedicated facilities must be "flat-rated." See AT&T at 34-35 (citing paragraph 743, but quoting paragraph 744). But that obviously says nothing about whether a charge should be recovered through a recurring or non-recurring charge.

no reason why the LECs should not recover through an NRC their full one-time costs of providing, terminating or modifying an access service.").

Third, and finally, AT&T claims (at 35-36) that the $35 hot-cut rate in Delaware is not TELRIC-compliant, relying solely on arguments that this Commission has already rejected.[29] The situation here is the same as in New Jersey, where the New Jersey BPU also adopted a $35 promotional hot-cut rate that will remain in effect for two years despite finding that the actual TELRIC costs were much higher. See New Jersey Order ¶ 62; Martin/Garzillo/Sanford Reply Decl. ¶ 62. In fact, as in New Jersey, that rate is less than what Verizon demonstrated it costs to perform only a subset of the activities involved in completing a hot cut. See Martin/Garzillo/Sanford Reply Decl. ¶ 63. Thus, the Commission's conclusion that "Verizon's $35.00 hot cut rate in New Jersey is within the reasonable range that application of TELRIC principles would produce" applies with equal force here. New Jersey Order ¶ 65. While AT&T repeats its claim (at 35) that the rate here is only temporary, and that a hot-cut should cost less than $5.00, the Commission has rejected these same arguments, and AT&T provides no grounds for the Commission to reach a different result here. See id. ¶ 64 ("We are therefore not persuaded, based on the current record, by AT&T's contention that a hot cut should cost less than $5.00"); id. ¶¶ 63, 68 (deferring to the New Jersey BPU's decision to accept the $35 hot-cut rate, and rejecting claims that the rate is "merely a temporary credit").

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[29] AT&T also complains (at 32) about Verizon's $2.99 service charge for a CLEC's disconnection of service, but its claim is misleading. This charge is based only on the costs to connect service, which Verizon has divided in half and charges CLECs at two different time periods — half at the time a CLEC orders service, and the other half at the time it disconnects service. See Martin/Garzillo/Sanford Reply Decl. ¶ 66. This is advantageous to CLECs, which would otherwise have to pay the entire $5.98 charge associated with service connection up front. See id. ¶ 67.